IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5541 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEEPAKKUMAR KESHAVLAL PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 5541 of 2002

MR YN OZA, Senior Advocate with MR HRIDAY BUCH for Petitioner No. 1-2

MR MK DAGLI, AGP for Respondent No. 1-3

MR PK JANI for Respondent No. 4

MR HASMUKH D SUTHAR for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 13/09/2002

ORAL JUDGEMENT

#. The petitioners herein were the members of the respondent No.4 bank and by resolution dated 11.11.2001, which is at Annexure-L to the petition, both of them were removed as the members of the respondent No.4 bank. The resolution dated 11.11.2001 passed by the bank was approved by the District Registrar and the appeal against the aforesaid order was also dismissed by the Additional Registrar (Appeals) on 2.2.2002. The petitioners, thereafter, carried the matter further before the revisional authority. The revision was also dismissed by the State Government on 6.4.2002. Being aggrieved by the said order of the revisional authority, the petitioners have approached this Court by way of this petition.

#. On behalf of the present petitioners, a letter was addressed to the District Registrar, Mahesana on 24.5.2001 pointing out that, in the respondent NO.4 bank, elections are not held and that the Annual General Meeting was not held within time, and, that the direction may be given to the bank to hold election to elect new directors in place of the Directors, who are going to retire and such elections may be held by 30.6.2001. It seems that, respondent No.4 bank passed a resolution for investing Rs.3 crores for a period of three days by way of investment with Madhavpura Mercantile Cooperative Bank. Subsequently some resolution was passed to that effect approving such deposit. The petitioners, thereafter, addressed a letter dated 7.6.2001 to the Chairman of the respondent No.4 bank. In the said letter, they have pointed out that, even though, the amount of Rs.3 crores was deposited with Madhavpura Bank for three days with effect from 7.3.2001, the said amount is not taken back or withdrawn. They further pointed out irregularities regarding the meeting conducted on 13.3.2001. They also pointed out that, they are objecting to the resolution dated 17.3.2001 passed in the meeting bearing No.15. The said letter is annexed at page 51 in the compilation. Copy of the said letter was submitted to the District Registrar, Mahesana, Registrar, Cooperative Societies, Gandhinagar, the Chief General Manager, Reserve Bank of India and the Public Relation Officer, District Collector, Mahesana. In the meanwhile, news item was published in a daily viz., "Sandesh", on 23.8.2001. Copy of the said news item is annexed at Annexure-F to the petition. The news item, which was published with a headline, indicates that an amount of Rs.10.25 crores of respondent No.4 bank is at stake, as the amount is deposited with the Madhavpura Bank. Since at the relevant time, the aforesaid Madhavpura Bank was going through a financial crisis, publication of the said

report in the newspaper created panic amongst the depositors. It is required to be noted that, there is also a reference to both the petitioners in the aforesaid news item, which is published by the said daily in its issue, dated 23.8.2001. In the aforesaid news item, which is published by the said daily, it was mentioned that, both these petitioners, who are sitting Directors of the bank, have filed a complaint before the District Registrar in this respect, alleging impropriety of the so-called act of the bank in connection with the deposit of Rs.7.25 crores with Madhavpura Mercantile Cooperative Bank Limited as well as the deposit of Rs.3 crores as call money. Even on 25.8.2001, there was a publication of the news item in "Sandesh" daily, with the heading that, respondent No.4 bank is going on the line of Madhavpura Mercantile Cooperative Bank Limited. There is also a publication of the news item to the effect that the Directors of respondent No.4 bank have made complaint against the Chairman about illegalities committed by the said Chairman. According to respondent No.4 bank, publication of the aforesaid news item in the aforesaid newspaper created panic amongst the deposit holders and sizable number of deposit holders immediately tried to withdraw the deposits, with the result that, on a particular day, there was withdrawal of deposits to the tune of Rs.1 crore. According to respondent No.4 bank, because of the aforesaid act on the part of the petitioners, the bank suffered monetary loss and the bank was also about to face serious financial crisis in view of the news item published. The respondent No.4 bank, therefore, felt that the present petitioners were instrumental in giving this press report and, therefore, the petitioners acted in such a manner, by which the dignity of the bank was undermined, and that they have acted against the interest of the bank. It is also the say of respondent No.4 bank that the petitioners have tried to damage the reputation of the bank by their irresponsible act.

#. During the Annual General Meeting, which was held on 26.8.2001 the conduct of the petitioners was discussed and it was decided to take appropriate action against the petitioners in connection with their alleged act and the decision was taken to remove the petitioners as Directors and it was also resolved to take appropriate action for the purpose of removing the petitioners as members of respondent no.4. During the said meeting, opportunity was also given to the petitioners, by way of asking their explanation. The petitioners denied the allegations levelled against them.

#. On behalf of the petitioners, it was submitted that, they have not published the aforesaid news item. The petitioners were asked to give explanation as to why in the said news item, names of the petitioners also figured and as to what action, the petitioners are contemplating against the aforesaid daily newspaper for publishing the said false news item, wherein the names of the petitioners were also figured. Ultimately, explanation of the petitioners was not found to be acceptable and the resolution being Resolution No.12 was passed, by which it was decided to remove both the petitioners from the Managing Committee and it was also decided to take appropriate action against the petitioners for the purpose of removing them as members. The aforesaid resolution is at page 63 at Annexure-G.

#. The present petitioners, thereafter, challenged the aforesaid resolution by way of Arbitration Suit No.670 of 2001 and the Board of Nominees, by order dated 26.12.2001, allowed the application for interim injunction and respondent No.4 bank was restrained from implementing the resolution passed in its meeting dated 26.8.2001, by which the petitioners were removed as Directors of respondent No.4, and the petitioners were permitted to act as Directors of respondent No.4 bank by the said order. Prior to the aforesaid order of the Board of Nominees, a notice for convening a Special General Meeting on 11.11.2001, was issued to the petitioners on 1.11.2001. The Agenda of the said meeting was also sent to the petitioners. Subsequently, notice was issued to the petitioners, in which it was mentioned that, "it was decided to remove the petitioners as members of respondent No.4 bank". It is also pointed out in the said notice that "because of the publication of the news items in the daily newspapers dated 23.8.2001 and 25.8.2001, the bank has suffered a loss." The particulars of the same are also given in the said notice in detail, which is at page 119. The petitioners, thereafter, gave reply on 6.11.2001, which is at page 123. Ultimately, the resolution was passed in the Special General Meeting, which was held on 11.11.2001. Ultimately, a decision was taken to remove both the petitioners, and, accordingly, they were removed as members of respondent No.4 bank. The said resolution was unanimously passed by the members, who were present in the meeting on the aforesaid date. Accordingly, both the petitioners were removed from the membership of respondent No.4 bank by the said resolution, being Resolution No.2(1), which was passed in the Special General Meeting held on 11.11.2001. The said resolution is at page 128 in the compilation. The said decision was

taken considering the provision of by-law No.11(5) and it was found that respondent No.4 bank has suffered a loss in view of the alleged act of the present petitioners. The petitioners were not present during the aforesaid meeting. The resolution passed in the said meeting was sent to the District Registrar for his approval. At the time when the Board of Nominees decided the injunction application, the resolution passed by the bank, removing the petitioners as members, was pending before the District Registrar for his approval. In view of the same, in the order of the Board of Nominees, it was mentioned that the said order of injunction is subject to the decision of the District Registrar. Subsequently, the resolution of the bank, by which the petitioners were removed as members, was approved by the District Registrar by his order dated 11.1.2002, which is at page 253.

#. At that stage, the petitioners challenged the aforesaid decision by way of preferring a writ petition before this Court, being Special Civil Application No.1130 of 2002. However, since alternative remedy was available, the said petition was withdrawn from this Court. Thereafter, the petitioners carried the matter before the appellate authority. The said appeal, which was numbered as Appeal No.6 of 2002, was dismissed by the Additional Registrar (Appeals), Gujarat State, Gandhinagar. The appellate order is at Annexure-C to the petition. The petitioners, thereafter, carried the matter further before the revisional authority by way of revision. The said revision application, being Revision Application No.24 of 2002, was also dismissed by the Deputy Secretary (Appeals), Cooperative Department. Feeling aggrieved by the said order, the petitioners have approached this Court by way of this petition.

#. The petitioners have prayed that the order of the District Registrar, giving approval to the resolution of respondent No.4 bank, by which the petitioners were removed as the members, is required to be quashed and set aside and consequential orders passed by the appellate authority as well as by the revisional authority are also required to be quashed and set aside. The petitioners have relied upon the news reports as well as some other correspondence, which are on record, to substantiate their say that the petitioners have not acted against the interest of respondent No.4 bank and that, it is not a case in which any proceedings for removing them as members were required to be undertaken. It is submitted that, the petitioners have not acted contrary to by-laws. It is submitted that, there is absolutely no evidence on

record for coming to the conclusion that, so-called news items, which were published in the newspaper, were published at their instance or that they were even remotely responsible for getting the said news items published in the newspaper. It is submitted that, as, there is absolutely no material worth the name for coming to the conclusion that the petitioners had given the press reports to the said newspaper and simply because the news items were published in the newspaper, which might have created panic amongst the deposit holders, the same is not a ground for removing the petitioners from the membership of respondent no.4 bank. It is submitted that, there is neither direct nor indirect evidence for coming to the said conclusion. Under these circumstances, it is prayed that the decision of the District Registrar, giving sanction to the said resolution, is accordingly required to be quashed and set aside.

#. On behalf of the petitioners, it is also argued that the petitioners have not given the copy of the letter, which is addressed by the petitioners to the Chairman of the bank, to the press, in which certain so called irregularities were alleged. It is submitted that the petitioners were interested in protecting the funds of respondent No.4 bank, and, therefore, in order to see that the amount is properly secured, they addressed such letter to the Chairman of the bank. It is also averred in the petition that the Madhavpura Mercantile Cooperative Bank Limited became bankrupt on 11.3.2001 and the news item was published in the daily newspaper, i.e. "Gujarat Samachar", on 11.4.2001, wherein details about the deposits of various cooperative banks were mentioned and that included the deposit of respondent No.4 bank to the tune of Rs.10.25 crores. Relying upon the said averments, it is argued by Mr.Oza, learned Senior Counsel, appearing for the petitioners, that even otherwise, the said news item was published by another newspaper as back as on 11.4.2001, and, therefore, the present petitioners cannot be blamed even if there was panic amongst the deposit holders. It is accordingly submitted on behalf of the petitioners that, considering the facts and circumstances of the case, the District Registrar should not have approved/sanctioned the resolution passed by respondent No.4 bank in its Special General Meeting, resolving to remove the petitioners as members of respondent No.4 bank.

#. The petition is resisted on behalf of respondent No.4 bank. On behalf of respondent No.4 bank, it is submitted by Mr.P.K.Jani, learned advocate, that since the

petitioners have not joined Mahesana Nagrik Sahakari Bank Limited as party in its individual capacity, the petition filed against the Chairman of the Bank is not maintainable as the proper party is not joined, i.e. the bank itself. It is submitted by Mr.Jani that, even otherwise, respondent No.4 - cooperative bank is not a `State' within the meaning of Article 12 of the Constitution of India, and, therefore, the petition under Article 226 of the Constitution of India is not maintainable against respondent No.4 bank. It is submitted that, respondent No.4 bank is managing its affairs through an association of the persons, and, if the members of respondent No.4 bank in their wisdom, have taken a particular decision in a democratic manner, such decision/resolution is a part and parcel of the democratic function of the members and is also a part of internal management of the society and the members have all rights to take appropriate decision by majority and the judicial review of such decision is not permissible.

##. It is submitted by Mr.Jani that the action of respondent No.4 bank is as per the by-laws of the bank. He further submitted that, the petitioners are not removed merely for giving news item, but considering the overall conduct of the petitioners, such as uttering words like "this bank is going to be closed and that the shutters of the bank will have to be put down." In view of the said utterances by the petitioners and in view of their propaganda against the interest of the bank amongst the depositors and other members, considering all these aspects, a decision was taken by the General Body to remove the petitioners. In short, it is submitted by Mr.Jani that the action is not taken only on the basis of the news report, but the same is taken considering overall material on record. He also submitted that, this Court cannot review the decision taken by the General Body of respondent No.4.

##. On merits of the issue, it is submitted by Mr.Jani that, considering the totality of the evidence on record and considering the irresponsible act on the part of the petitioners, it is clear that respondent No.4 bank has suffered a lot. Not only that, but on a given day, there was withdrawal of Rs.1 crore and that respondent No.4 bank was required to raise its liquidity ratio and for that, respondent No.4 had paid heavy interest. It is submitted that, therefore, considering the totality of the evidence on record and considering the conduct of the petitioners, by which they have acted in an irresponsible manner, the resolution, which was passed by the members of respondent No.4 bank, is absolutely in accordance with

law and the petitioners can be removed as members in view of the provision of by-law No.11(5) framed by respondent No.4 bank. It is also submitted that, by investing the amount with the Madhavpura Mercantile Cooperative Bank Limited, respondent No.4 bank has not suffered any loss worth the name and since long, respondent No.4 bank used to deposit with Madhavpura Mercantile Cooperative Bank Limited and at the time of some deposits in the past, the petitioners themselves were party and signatories to such decision. It is submitted by Mr.Jani that, even though, proper opportunity was given to the petitioners to rebut the aforesaid fact, which was published in the newspaper, the petitioners have not taken any proceedings even against the newspaper, nor is any clarification given by the petitioners in the press. It is submitted that, it is clear that these news items have been published at the instance of the petitioners, because, even otherwise, there is no reason for the Press to give the names of the present petitioners in the news items. It is submitted that, except the names of the present petitioners, names of no other Directors were published in the newspaper and that itself is a strong circumstance, by which it can be presumed that, the news items were published at the instance of the petitioners.

##. In view of the aforesaid conduct alleged against the petitioners, it was decided by the bank to remove the petitioners as members. Mr.Jani has accordingly supported the decision of respondent No.4 bank as well as the order of the District Registrar, giving approval to such decision. It is, therefore, prayed that, this petition is required to be dismissed with costs.

##. I have heard the learned advocates of both the sides in detail.

##. So far as the argument regarding maintainability of the petition against respondent No.4 bank is concerned, it is true that, respondent No.4 bank cannot be said to be a `State' within the meaning of Article 12 of the Constitution of India. However, it is required to be noted that the decision of respondent No.4 is subject to the approval of the District Registrar. Section 36 of the Gujarat Cooperative Societies Act, 1961 reads as under.:

Section 36 :

"(1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held

for the purpose, expel a member for acts which are detrimental to the proper working of the society;

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him;

Provided further that, the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective.

(2) No member of a society who has been expelled under sub-section (1) shall be eligible for re-admission as a member of that society, or for admission as a member of any other society, for a period of two years from the date of such expulsion;

Provided that, the Registrar may, in special circumstances, sanction the re-admission or admission, within, the said period, of any such member as a member of the said society or of any other as the case may be."

In view of the aforesaid provision, the said resolution comes into effect only after the same is approved by the Registrar as provided by the aforesaid provision. In that view of the matter, unless the resolution is approved, it cannot be implemented and it cannot be said to be a valid resolution. In view of the aforesaid provision, the resolution of respondent No.4 bank can come into effect after the same is approved by the District Registrar. Unless the resolution of respondent No.4 is approved by the District Registrar, it cannot be implemented and the decision of the District Registrar approving such resolution can be challenged before this Court. The petitioners are challenging the order of the District Registrar and the petition against the order of the District Registrar is certainly maintainable, and, therefore, I do not find any substance in the aforesaid argument of Mr.Jani about maintainability of the petition against respondent No.4 bank. The said contention is, therefore, rejected.

##. So far as the preliminary objection regarding nonjoinder of respondent No.4 bank is concerned, in my view, there is no substance even in this contention. As per the cause title, respondent No.4 is shown as "Mahesana Nagrik Sahakari Bank Limited". Therefore, the petition is essentially filed against respondent No.4 bank and the notice of the said petition, as per the title, was required to be served through the Chairman. It, therefore, cannot be said that the petition is filed against the Chairman in his individual capacity. As such, this petition is filed against respondent No.4 bank itself. In my view, therefore, the said contention of Mr.Jani is also required to be rejected and accordingly, the same is rejected.

##. So far as the decision taken by the General Body of respondent No.4 bank is concerned, it is no doubt true that the members of the cooperative bank or of any institution are always entitled to consider a particular subject and in a democratic set up, such decision can be taken by the General Body in its wisdom. If such decision is taken by the members in their wisdom, this Court cannot sit in appeal over such decision as it is for the members to take such decision in a manner, they like. It may not be even proper for this Court to question the propriety of such decision, but the question, which is required to be considered, is, whether, such decision is in consonance with the provisions of Section 36 of the Act, and, whether the Registrar is required to give approval in a mechanical manner to whatever resolution, which might be passed by the members. Considering the scheme of Section 36 of the Act, in my view, the Registrar is assigned with a duty for the purpose of giving approval to the resolution of the society. The Registrar is required to take decision for giving approval by considering all the facts and circumstances of the case as well as considering the material on record.

##. Considering the scheme of Section 36 of the Act, it cannot be said that, the approval of the Registrar is merely a formality and that the Registrar has to give approval moment the resolution is passed by the society. It, therefore, cannot be said that the duty of the Registrar is of a ministerial nature. A question regarding the powers of the Registrar, while giving approval in such cases, came up for consideration before the Bombay High Court in the case of Vishwajit Cooperative Housing Society Vs. P.P.Damle, reported in 1976 12 CLG page 14. A Division Bench of the Bombay High Court has considered the provision of Section 35(1) of

the Maharashtra Cooperative Societies Act, 1970 and the said provisions are in pari materia with the provision of section 36 of the Gujarat Cooperative Societies Act, 1961. It is observed by the Bombay High Court as under.:

> ".....We have already referred to S.35(i) of the Act, and the proviso to sub-s.(1) of s.35 says that no resolution be effective unless it is approved by the Registrar. The question, therefore, is what is the meaning of the word "approval" used in the proviso to sub-s (1) of s.35 of the Act. The dictionary meaning of the word "approve" given in the Concise Oxford Dictionary is this :
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> "....consider, good, (p.p.) pronounced satisfactory, (of persons, reasons, etc.)".
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> It is therefore, clear that before the Registrar can give approval, he is required to consider the resolution and after he is satisfied regarding the merits of the case, he is to give the necessary approval, which means either approbation or sanction. Surely, no sanction can be given to any proposal unless the authority giving sanction considers the reasons or the merits of a particular matter. Apart from this dictionary meaning; in Stroud's Judicial Dictionary, 4th Edition, Volume I at page 167, we find the meaning of the word "approval" stated thus:
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> "A thing done with the "approval" of means that, and only that, which he has, with full knowledge, approved."
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> In other words, there can be no approval of any matter unless the person giving approval has full knowledge of the thing which he is required to approve of. It is also needless to say that when one of the parties to a bargain writes "approved" at the end of the draft of the agreement and adds his signature, he thereby makes the draft a binding contract, and does not merely express approval of its form after the manner of conveyances. That being the position when the Registrar is expected to give approval to a resolution passed by a society under s.35(1) of the Act, surely he is not only simply to look at the formalities but also to consider the merits of the case against the member sought to

be removed under the resolution passed by the society."

##. In view of the aforesaid aspect of the matter, in my view, merits of the decision taken by the Registrar, under section 36 of the Act, can certainly be examined by this Court and it cannot be said as canvassed by Mr.Jani, that a petition, under Article 226 of the Constitution of India, is not maintainable, simply because the members have passed a resolution, by following the procedure prescribed by section 36 of the Act. In that view of the matter, this Court can certainly examine, whether the Registrar was justified in granting the approval or refusing the approval and the decision of the Registrar can always be examined by this Court in exercise of the powers under Article 226 of the Constitution of India.

##. It is required to be noted that, ultimately two resolutions have been passed against the petitioners. The first is for removing the petitioners as Directors of respondent No.4 bank. The decision was taken in the Annual General Meeting held on 26.8.2001 and by way of Resolution No.12, it was resolved to remove the petitioners as Directors. Subsequently, a resolution was passed being Resolution No.2(1), in the Special General Meeting held on 11.11.2001. In the said meeting, it was resolved to remove the petitioners even as the members, as, it was found that the petitioners have deliberately tried to damage the reputation of the bank and that therefore, they were required to be removed as per by-law No.11(5)

##. So far as the question relating to publishing the news items in the newspaper is concerned, it is required to be considered, whether the petitioners were instrumental in giving such news items. Initially, on behalf of the petitioners, a letter was addressed to the Registrar in connection with holding of the election. Subsequently, a letter was addressed to the Chairman of respondent No.4 bank, alleging certain irregularities, copies of which were given to various authorities. So far as the action of the petitioners in making the allegations against the Chairman is concerned, the said action on the part of the petitioners cannot be considered as an act against the interest of respondent No.4 bank in any manner. The question, which is required to be seen, is, whether the petitioners have tried to damage the reputation or have acted against the interest of respondent No.4 bank, which may justify the action of the General Body to remove the petitioners as the members as per the provision of by-law 11(5). It is required to

be proved that the action of the petitioners is such that, with deliberate intention, they have tried to damage the reputation of respondent No.4 bank or they have deliberately acted against the interest of respondent No.4 bank. In my view, addressing a letter to the Chairman of respondent No.4 bank, pointing out certain irregularities, and sending the copies thereof to various authorities itself cannot be said to be a ground for coming to the conclusion that the petitioners have tried to damage the reputation of respondent No.4 or have tried to act against the interest of respondent No.4 bank. The allegations against the Chairman of respondent No.4 bank cannot be construed as allegations against respondent No.4 bank, as, both the Chairman and the bank are different, because, the Chairman acts in his individual capacity and any allegation against him can never be taken as a ground for taking action under section 36 of the Act. In any case, even by reading the letter dated 7.6.2001, at page 51, which is addressed to the Registrar, it cannot be said that, by writing such letter, the petitioners have acted contrary to the by-laws and they are guilty as per by-law No.11(5).

##. It is, no doubt, true that, certain news items, which were published in the newspaper, have damaged the reputation of respondent No.4 bank. The news published on 23.8.2001 in the newspaper "Sandesh", with the heading that, Rs.10.25 crores of respondent No.4 bank deposited with Madhavpura Bank are at stake, has no doubt damaged the reputation of respondent No.4 bank to a greater extent. Similarly, even the news item published on 25.8.2001 has equally damaged the reputation of respondent No.4 bank. It is equally true that, names of the present petitioners are also disclosed in the said newspaper reports. It is also equally true that, in view of the publication of the aforesaid news items, there is considerable financial loss to respondent No.4 bank as argued by Mr.Jani, as, many depositors have withdrawn their deposits on a particular day. However, there is nothing on record to suggest that, the petitioners have given this information to the press. It is equally possible that a letter addressed by the petitioners to so many authorities, including the Chairman of respondent No.4 bank, might have been misused by someone, but unless there is some evidence on record for coming to the conclusion that, it is the petitioners who have given the information to the press, it is difficult to accept the say of Mr.Jani that these news items were published at the instance of the petitioners. So far as the act on the part of the petitioners regarding informing the Chairman of respondent No.4 bank about depositing some

amount with Madhavpura Mercantile Cooperative Bank Limited is concerned, as argued by Mr.Oza, the same was for the benefit of respondent No.4 bank itself, so that, money of the bank can be secured in a better manner. It was open for respondent No.4 bank even to call for necessary information from the press itself. Simply because the petitioners have not given the explanation in the press, in any manner, ipso facto cannot be treated as a ground for coming to the conclusion that the news items were published at the instance of the petitioners. The District Registrar was, therefore, required to consider the aforesaid aspect before approving the resolution of respondent No.4 bank. The District Registrar has considered the argument of respondent No.4 bank in connection with the following of the procedure, by which the petitioners were given appropriate notice etc. for remaining present in the meeting. The District Registrar found that the petitioners have not given any plausible explanation, whether the news items were published at their instance or not. The District Registrar found that the meeting was held at the appropriate place and the resolution was passed unanimously and considering the said aspects, the District Registrar has given his approval. However, in my view, what is required to be considered by the District Registrar is, whether there is any adequate material for coming to the conclusion that the petitioners have acted contrary to the interest of respondent No.4 bank. Reading the reasoning part of the order of the District Registrar, it is clear that the District Registrar has not given any reasoning on merits of the issue, i.e. regarding the nature of material for coming to the conclusion in connection with the aforesaid act on the part of the petitioners, simply because, respondent No.4 bank has followed the procedure by giving an opportunity of hearing to the petitioners, and calling the meeting at the appropriate place and appropriate time itself is not enough. Over and above the procedural part, the District Registrar, at the time of giving approval, is also required to consider the merits of the issue to find out, whether really the petitioners have acted against the interest of respondent No.4 bank and ultimately to find out, as to what is the nature of the alleged act on the part of the petitioners, which has damaged the reputation of respondent No.4 bank. Since appropriate reasoning is not given by the District Registrar on the aforesaid aspect, and, except merely dealing with the procedural part of holding the meeting, place of meeting, giving opportunity to the petitioners to defend their case, nothing further has been considered on merits about availability of the material for coming to the conclusion about the alleged act of the

petitioners, in my view, the matter is required to be sent back to the District Registrar to consider the aforesaid aspect.

##. Even, the appellate authority has also considered merely the procedural aspect. In the concluding part of its order, the appellate authority has not considered, in detail, the aforesaid aspect, and has merely considered the propriety of the procedure adopted by respondent No.4 bank at the time of holding the meeting.

##. Mr.Oza, has also drawn my attention to the show cause notice, which was issued to the petitioners on 2.11.2001, which is at page 119 in the compilation, wherein the particulars are given about the damage caused to respondent No.4 bank, i.e. five particulars are given in this behalf. According to him, reading the show cause notice, it is clear that the particulars of damage caused to respondent No.4 bank are attributed to the press reports given by the petitioners, as mentioned in the said show cause notice. Ultimately, that show cause notice was the starting point for the purpose of removing the petitioners as members, and, therefore, simply because the petitioners had not remained present before the committee on the relevant day, that fact itself may not be very relevant, as, ultimately, on the basis of the available material on record, the Registrar is required to apply his mind, whether it is a fit case for granting approval or not.

##. It is also submitted by Mr.Jani that, over and above the aforesaid press news, there is other material also, which was considered by respondent No.4 bank for taking the action under section 36 of the Act. However, the District Registrar has not considered any other aspect at all in the order. If there is any other material, which was also taken into consideration by respondent No.4 bank at the time of passing the resolution, the District Registrar may take into consideration the aforesaid material also. The District Registrar is required to consider all the aspects about the merits of the resolution based on some material on record. In my view, in the absence of any other evidence in this behalf, it is not possible for coming to the conclusion that the petitioners were instrumental in giving the news items, which ultimately have resulted in damaging the reputation of respondent No.4 bank. As pointed out earlier, news items published are definitely defamatory and damaging the reputation of respondent No.4 bank, but at least, there should be some evidence on record for coming to the conclusion that, the said act was done by the

petitioners. The District Registrar has not considered this aspect in detail and the reasoning of the District Registrar is very cryptic. It is submitted by Mr.Jani that the resolution passed by respondent No.4 bank is not only on the ground of publication of the news items, but the same was passed considering the other acts of the petitioners also, such as discussing the financial position of respondent No.4 bank in public etc. However, there is nothing in the impugned order in this connection to suggest that other acts of the petitioners were taken into account. Under these circumstances, it is for the District Registrar to consider, whether the approval is required to be given in view of the material available on record, by which it can be said that the petitioners have done a particular act, by which the reputation of respondent No.4 bank was damaged.

##. During the pendency of this petition, on behalf of the petitioners, an affidavit is submitted and the copy thereof is also made available to the other side. In the said affidavit, it is stated that, there was no intention on the part of the petitioners to damage the reputation of respondent No.4 bank, and, that some miscreants have tried to take advantage of the situation by making the contents of the letter public. It is also stated that the petitioners have not published the said letter and by publication of the said news items, if there is any damage to the bank, the petitioners express their regret, and, that they have also suffered anguish and pain. It is also averred in the affidavit that, the petitioners undertake that the petitioners will not do any act detrimental to the interest of respondent No.4 bank. Mr.Jani has strongly objected the averments made in the affidavit to the effect that the petitioners have not published the letter in question. However, while taking this affidavit on record, this Court has not expressed any opinion one way or the other. However, the said affidavit is simply taken on record.

##. Since the District Registrar has not considered the aforesaid aspect regarding availability of any other material on record and if the same was available with the bank at the time of passing the resolution, the matter is sent back to the District Registrar to find out the said aspect. It is for the District Registrar to consider, whether the resolution of the bank, which was sent for approval, was based on any other ground and, whether any material was available on record at the time when such resolution was passed by the bank, and, whether based on such material, any opportunity was given to the petitioners to defend their case. The District Registrar

may also consider, whether any legal evidence is available on record even for coming to the conclusion about publication of the news item, by which, such publication can be attributed to the petitioners.

##. Under the circumstances, the petition is partly allowed to the aforesaid extent. The order of the District Registrar, which is confirmed by the Registrar in appeal as well as by the revisional authority in revision, is quashed and set aside. The matter is sent back to the District Registrar for a fresh decision in accordance with law. The District Registrar may pass appropriate order in the light of the observations made in this order. The District Registrar may take appropriate decision afresh as early as possible, and, latest by 31.12.2002. The order of the District Registrar is accordingly quashed and set aside. However, till the fresh decision is taken by the District Registrar, if any other proceedings are pending before any other forum, either at the instance of the petitioners or the respondents, the same shall not be proceeded further till the decision is arrived at by the District Registrar in this behalf.

##. It is needless to say that, before passing the order, the District Registrar will give an opportunity to both the sides to canvass their case fully and for that purpose, if any further information is required to be called for by the District Registrar from any of the parties, he will be free to do so, and even the affidavit, which is filed by the petitioners before this Court, may also be taken into consideration, and, if any counter affidavit is submitted on behalf of the bank, the same also may be taken into consideration. If either parties want to produce any other material in connection with the resolution passed by the bank, the parties are at liberty to produce such material in connection with the issue in question.

##. Rule is accordingly made absolute with no order as to costs.

(P.B.Majmudar,J)
(pathan)